

## Opinion No. 55-6072

January 10, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mrs. Georgia L. Lusk Superintendent of Public Instruction Department of Education, Santa Fe, New Mexico

Mr. Tom Wiley, your predecessor as Superintendent of Public Instruction, prior to the end of his term, requested the opinion of this office upon the following question: Is a school administrative unit a separate political subdivision of the state?

Mr. Wiley was concerned with application of the Federal Social Security Law as amended by the 83rd Congress, and requirements for entry into the Federal Social Security program by employees covered by a state retirement program. I gather from Mr. Wiley's letter that he was under the impression that, dependent upon our opinion on the question submitted, the educational employees of the state schools would have to vote on the referendum called for by the 1954 amendment to the Social Security Act, either on, 1. a state-wide basis, or, 2. a school administrative unit by school administrative unit basis, and, that, one method would be exclusive of the other.

Amendments to Section 218 (d) (42 USCA Sec. 418d) of the Social Security Act, pertinent to this opinion provide substantially that, certain conditions having been met, the Social Security system may be extended to positions covered by a state retirement system. Certain groups of employees are excepted but school employees are not among the listed exceptions. One of the pre-requisites for entry into a Social Security program is a referendum with a favorable majority vote amongst employees covered by the **same** state retirement system and then follows Section 218 (6) which provides:

"(6) If a retirement system covers positions of employees of the State and positions of employees of one or more political subdivision of the State, or covers positions of employees of two or more political subdivisions of the State, **then, for purposes of the preceding paragraphs of this subsection, there shall, if the State so desires, be deemed to be a separate retirement system with respect to any one or more of the political subdivisions concerned and,** where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to to the state and any one or more of the political subdivisions concerned." (Emphasis ours)

This is the section which raises the question asked by Mr. Wiley.

Congress in connection with other laws, among them the Internal Revenue Act, 26 USCA, Section 22 (4), has impliedly accepted school districts as within the meaning of the term "political subdivision." See Treasury Regulation 94 promulgated under the Revenue Act of 1936. See also **Commissioner of Internal Revenue vs. Shamberg's**

**Estate**, 144 F.2d 998 Certiorari Denied, 323 U.S. 792, where the following definition of the term "political subdivision" is given:

"The term 'political subdivision' is comprehensive and denotes any division of a state made by proper authorities thereof, acting within their constitutional powers, for purposes of carrying out a portion of those functions of state which by long usage and inherent necessities of government have always been regarded as public."

And, from the same case should be noted the following:

"The term 'political subdivision' may be used in statutes in more than one sense. It may designate a true governmental subdivision such as a county, township, etc., or, as held in the Attorney General's opinion under consideration, it may have a broader meaning, denoting any subdivision of the state created for a public purpose although authorized to exercise a portion of the sovereign power of the state only to a limited degree."

See also **Water Supply Company vs. Albuquerque**, 9 N.M. 441, where Dillon, Municipal Corporations, is approvingly quoted as follows:

"A school district is a governmental auxiliary of the state, and the state incorporates it that it may more effectually discharge its appointed duties; **they are termed involuntary political divisions of the state or territory**, created by general laws to aid in the administration of government in carrying out the universal public school system. **Their powers relate to matters of state** as distinguished from municipal concern, so they are not adjuncts or agencies of municipal corporations unless the legislature creating them makes them so, and their existence may be entirely distinct from that of a municipal corporation." (Emphasis ours.)

Thus, it would seem that as the term "political subdivision" is used in the Social Security Act, the broader meaning cited in the **Shamberg** case above, would be applicable. And, therefore, school districts carrying out the educational functions of the state would be included within the term "political subdivision."

It is, therefore, the opinion of this office that a school district is a separate political subdivision of the state insofar as application of amendments to Section 218 of the Social Security Act is concerned. However, by the express terms of the amendments, the referendum called for where employees of one or more political subdivisions of the state are covered by the same retirement system, may, at the pleasure of the state, be on a state-wide or upon a school district to school district basis. And there seems to be no prohibition against several of the districts banding together and having the referendum within that group.

The groupings of political subdivisions, school districts in this case, for purposes of the referendum are quite flexible, subject only to discretion of the state as to how they should be made. In this regard it might be suggested that, from a standpoint of ease

and efficiency of administration, the grouping and referendum thereunder might preferably be state-wide.

Trusting that this answers your question, I am

By: Santiago E. Campos

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